

Revision: HCFA-PM-91-4 (BPD)  
August 1991

SUPPLEMENT 9 TO ATTACHMENT 2.6-A  
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OMB No.: 0938-

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State: South Carolina

1917  
of the  
Act

The agency provides for the denial of payment for institutional services or home and community based services for individuals who disposed of resources for less than fair market value within 30 months of requesting Medicaid sponsorship of such services.

- A. The penalty applies to institutionalized individuals and to individuals who receive home and community based services.

An institutionalized individual is an individual who resides in a medical institution or nursing facility and his eligibility for Medicaid sponsorship of payment is contingent upon his meeting the level of care criteria established by the State. A nursing facility does not include an intermediate care facility for the mentally retarded.

- B. The penalty applies if the request for Medicaid sponsorship for institutional care or home and community based services was made July 1, 1988 and later and if the transfer for less than fair market value occurred July 1, 1988 and later.

- C. The penalty period is described below:

1. For individuals residing in an institution, the penalty is the lesser of:

- o 30 months of ineligibility for a vendor payment for institutional care from the date of transfer; or
- o The number of months it takes to reduce the uncompensated value to zero or within the resource limit when the average private nursing home rate in the state, at the time of application or redetermination of nursing facility services, is divided.

2. For individuals receiving home and community based services, the penalty is the lesser of:

- o 30 months of ineligibility for Medicaid payment of home and community based services from the date of transfer; or

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- o The number of months it takes to reduce the uncompensated value to zero or within the resource limit when the average private nursing home rate in the state, at the time of application or redetermination of nursing facility services, is divided.

D. No penalty is imposed for the transfer:

1. Of a home to a:
  - a. spouse,
  - b. child under age 21 or a blind or disabled child,
  - c. sibling with equity interest who lived in the home at least one (1) year before the individual's admission to the institution, or
  - d. child who lived in the parent(s)' home for at least two (2) years before the parent was admitted to the institution and who provided care for the parent which delayed institutionalization.
2. Of resources to a community spouse, after <sup>09/30/89</sup>~~10/1/89~~, or blind or disabled child, after 7/1/88. The penalty is imposed for transfer to the community spouse prior to 10/1/89.
3. If the individual can show that he intended to dispose of resources at fair market value or for other consideration. This would be an individual who inadvertently did not receive adequate compensation or an individual who transferred resources to another individual in return for care which delayed institutionalization.
4. If the individual can show that the resources were transferred for some reason other than to qualify for Medicaid. For example, an individual may have been elderly or had a disabling condition at the time of transfer, but he did not need nursing home care. Subsequent to the transfer, the individual's condition deteriorated so that nursing home care became necessary.

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This individual would not be penalized for a transfer which occurred prior to the time his health deteriorated.

5. If the imposition of the penalty would work an undue hardship. ~~An undue hardship~~ is defined as discharge by the medical facility or denial of home and community based services which would result in the individual being placed in a life threatening situation.

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STATE: SOUTH CAROLINA

THE FOLLOWING TRANSFER OF ASSETS POLICY APPLIES FOR TRANSFERS WHICH OCCURRED ON OR AFTER AUGUST 11, 1993. (THE RULES FOUND ON PAGES 1 THROUGH 3 APPLY TO TRANSFERS WHICH OCCURRED PRIOR TO AUGUST 11, 1993.) AMENDMENTS DO NOT APPLY TO SERVICES PROVIDED BEFORE OCTOBER 1, 1993.

If the institutional individual or his spouse disposed of assets for less than fair market value on or after the look-back date, the individual is ineligible for certain Medicaid services throughout a penalty period.

**APPLIES TO:** Individuals residing in nursing facilities, individuals receiving care based on a level of care equivalent to that of nursing facility services, (e.g., swing beds) and individuals receiving home and community based services.

**ASSETS ARE:** Resources defined as countable resources by the Supplemental Security Income (SSI) program. Although the home is considered an excluded resource for SSI purposes, it is not exempt from the transfer of assets rules. Assets may also include income.

**JOINTLY HELD ASSETS:** An asset held by an individual in common with another person in a joint tenancy in common or similar arrangement, is considered to be transferred by the individual when any action is taken by the individual or the other person to reduce or eliminate the individual's ownership or control of the asset. However, the individual is not penalized if the other person can prove that the institutionalized individual has no ownership interest or only partial interest in the asset and the part removed was the amount owned by the other person.

**LOOK-BACK DATE:** Is 36 months (60 months if the assets were transferred through a trust) before the date the individual is both an institutionalized individual and has applied for Medicaid.

**SERVICES NOT COVERED BY MEDICAID DURING THE PENALTY PERIOD:** Nursing facility services, a level of care in any institution equivalent to that of nursing facility services, and home and community based services.

**PENALTY PERIOD CALCULATION:** The penalty period begins on the first day of the month in which the transfer occurred. The total cumulative uncompensated value of all assets transferred by the individual or his spouse is divided by the average private pay nursing home rate in the state. The individual would be ineligible for certain Medicaid services (as described above) for the resulting number of months. If the individual made multiple transfers for less than fair market value during the look-back period, the penalties are applied consecutively, not concurrently.

If the institutionalized individual is being penalized due to a transfer by the spouse, the penalty must be apportioned between the spouses if:

the spouse is or become eligible for Medicaid; and

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a penalty could be assessed against the spouse (i.e., the spouse becomes institutionalized); and

some portion of the penalty against the institutionalized individual remains at the time the above conditions are met.

**EXCEPTIONS TO THE PENALTY:** No penalty is imposed if:

- A. The assets transferred were a home and title to the home was transferred to:
1. the spouse of the institutionalized individual;
  2. a child who is under age 21 or meets the Supplemental Security Income definition of blindness or disability;
  3. a sibling of the individual who has an equity interest in the home and who was residing in the home for at least one year immediately before the date the individual became institutionalized; or
  4. a son or daughter of the individual (other than a son or daughter described in #2 above) who was residing in the home for at least two years immediately before the individual became institutionalized and who provided care which delayed institutionalization.
- B. The assets were transferred to:
1. the individual's spouse or to another for the sole benefit of the spouse;
  2. another for the sole benefit of the individual's spouse from the spouse;
  3. a trust established solely for the benefit of the individual's blind or disabled child; or
  4. a trust described in (d)(4) established solely for the benefit of an individual who meets the SSI definition of disability.

In this section, a transfer made is considered to be "for the sole benefit of" a spouse, disabled child or individual under age 65, if the transfer is arranged in such a way that no individual except the spouse, child or individual can benefit from the assets transferred in any way at the time of transfer or in the future.

A trust is considered to be established "for the sole benefit of" a spouse, disabled child or individual under age 65 if the trust benefits no one but the individual at the time the trust was established or in the future. However, the trust may provide for reasonable compensation for a trustee to manage the trust.

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If a beneficiary is named to receive the asset, or whatever is left, at the individual's death, the transfer to the trust can still be considered to have been for the sole benefit of the spouse, disabled child or individual under age 65 if the state Medicaid agency is named as the primary beneficiary of the asset to receive up to the amount paid by Medicaid with the other designated beneficiary receiving any remaining amounts.

- C. the individual can show that he intended to dispose of the assets either at fair market value or for other valuable consideration;
- D. the individual can show that he transferred the assets exclusively for a purpose other than to qualify for Medicaid;
- E. all assets transferred for less than fair market value have been returned to the individual; or
- F. it is determined that the denial of eligibility would work an undue hardship. Undue hardship is defined as refusal to admit or discharge by the medical facility or denial of home and community based services which would result in the individual being placed in a life threatening situation.

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